IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3952 OF 2004

IN

CRIMINAL APPEAL NO.1028 OF 2004

Sudhir Lahoo Nikam .. Applicant

versus

State of Maharashtra .. Respondents

...

Mr.D.B. Tare for the applicant.

Mr.A.M. Shringarpure, APP for the State.

CORAM : V.M. KANADE, J

DATED : 4th October 2004.

P.C:-

1. Heard the learned counsel appearing for the applicant and learned APP appearing on behalf of the State.

2. The applicant is convicted by the trial Court under section 376(2)(f) and sentenced to suffer RI for

10 years. The applicant was on bail during trial. I have perused the evidence of the prosecutrix which has categorically stated in her evidence that on the date of the incident, she was alone in the house and her maternal uncle Maruti asked her to open the door as he wanted drink water. When she opened the door, there were four persons outside her room who thereafter gagged her mouth and committed rape on her and she became unconscious after the incident of rape. In her evidence, she has stated that she had no occasion to see the face of the accused. Similarly, in her cross examination, she has admitted that though she had told the police that only four persons had entered the house and not 8 persons as stated by her in her evidence.

3. Considering the material contradiction, I am of the view that the applicant is entitled to be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount. The applicant however to report to Dharavi Police station once a month.

4. The payment of fine is also stayed.

V.M. KANADE, J